

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH B.,

Plaintiff,

Case No. C20-198-MLP

V.

## ORDER

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

## I. INTRODUCTION

Plaintiff seeks review of the denial of his application for Supplemental Security Income. Plaintiff contends the administrative law judge (“ALJ”) erred by discounting his testimony and his wife’s lay statement, and by accepting two medical opinions. (Dkt. # 19.) As discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

## II. BACKGROUND

Plaintiff was born in 1972, has a high school education, and has worked as an operating engineer, garbage collector driver, and janitor. AR at 24, 54. Plaintiff was last gainfully employed in 2017. *Id.* at 17.

1 Plaintiff applied for benefits in August 2017, alleging disability as of April 4, 2017. AR  
2 at 15. After the ALJ conducted a hearing in February 2019, the ALJ issued a decision finding  
3 Plaintiff not disabled. *Id.* at 32-61, 15-26. In pertinent part, the ALJ found Plaintiff's severe  
4 impairments of carpal tunnel syndrome, degenerative disc disease, obesity, diabetes,  
5 hypertension, depression, and anxiety limited him to unskilled medium exertion work with  
6 frequent manipulative activities and no overhead reaching. *Id.* at 17, 19. Based on vocational  
7 expert testimony the ALJ found Plaintiff could perform medium or, in the alternative, light jobs  
8 found in significant numbers in the national economy. *Id.* at 25.

### 9                   **III.    LEGAL STANDARDS**

10                  Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social  
11 security benefits when the ALJ's findings are based on legal error or not supported by substantial  
12 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a  
13 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the  
14 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
15 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error  
16 alters the outcome of the case." *Id.*

17                  "Substantial evidence" is more than a scintilla, less than a preponderance, and is such  
18 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
19 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
20 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
21 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
22 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
23 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*

1 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
 2 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

3 **IV. DISCUSSION**

4 **A. The ALJ Did Not Err in Evaluating Medical Opinions**

5 Gary Gaffield, D.O., examined Plaintiff in March 2018 and reviewed some of his records.  
 6 AR at 573. Dr. Gaffield opined Plaintiff could perform medium-exertion work and frequently  
 7 perform manipulative activities. *Id.* at 577-78. Plaintiff contends the ALJ erred by finding  
 8 persuasive Dr. Gaffield's opinions and the opinions of non-examining physician Guillermo  
 9 Rubio, M.D., that relied on Dr. Gaffield's opinions.

10 An ALJ generally may accept any medical opinion and need not even give reasons. *See*  
 11 *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ must provide reasons for rejecting a  
 12 medical opinion, but not for accepting and interpreting one); *see also Turner v. Comm'r of Soc.  
 13 Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (“the ALJ did not need to provide ‘clear and  
 14 convincing reasons’ for rejecting [a treating doctor’s] report because the ALJ did not reject any  
 15 of [his] conclusions”).

16 Here, Plaintiff fails to show the ALJ was required to reject Dr. Gaffield's opinions.  
 17 Plaintiff contends Dr. Gaffield did not give “consideration to the impact of Plaintiff” subjective  
 18 symptoms” on his ability to work. (Dkt. # 19 at 8.) But an ALJ considers a claimant’s subjective  
 19 symptom testimony separately from medical opinions and, in fact, may discount a medical  
 20 opinion that relies inappropriately on a claimant’s self-reports. *See Ghanim v. Colvin*, 763 F.3d  
 21 1154, 1162 (9th Cir. 2014) (“If a treating provider’s opinions are based ‘to a large extent’ on an  
 22 applicant’s self-reports and not on clinical evidence, and the ALJ finds the applicant not credible,

1 the ALJ may discount the treating provider's opinion." (quoting *Tommasetti v. Astrue*, 533 F.3d  
2 1035, 1041 (9th Cir. 2008))).

3 Plaintiff also argues Dr. Gaffield's opinions warranted little weight because he relied on  
4 "a cursory evaluation that did not test Plaintiff's abilities on a repetitive basis" and reviewed only  
5 two treatment notes and two x-rays. (Dkt. # 19 at 8.) Plaintiff cites case law holding an ALJ  
6 "may" discredit a conclusory, brief, unsupported medical opinion. *Burrell v. Colvin*, 775 F.3d  
7 1133, 1140 (9th Cir. 2014). However, Dr. Gaffield's opinion is not conclusory, brief, or  
8 unsupported. It is supported by his examination of Plaintiff as well as his review of some  
9 records. There is no requirement to reject an opinion from a doctor who has not reviewed the  
10 entire record. And Plaintiff fails to identify any additional records that likely would have altered  
11 Dr. Gaffield's opinions. Plaintiff has shown no error in the ALJ's analysis of Dr. Gaffield's  
12 opinions.

13 In addition to challenging Dr. Rubio's opinions for relying on Dr. Gaffield's opinions,  
14 Plaintiff argues in a cursory fashion that Dr. Rubio provided no explanation. Plaintiff's argument  
15 finds no support in the record. Dr. Rubio explained he relied on Dr. Gaffield's opinions because  
16 they were "consistent [with] and supported [by] totality of evidence." AR at 78. Dr. Rubio also  
17 explained manipulative activities were limited to frequent due to carpal tunnel syndrome, and  
18 pointed to "normal" cardiac function and "fair control" of diabetes to support his opinions. *Id.* at  
19 80. Plaintiff's argument fails.

20 The Court concludes the ALJ did not err by finding Dr. Gaffield's and Dr. Rubio's  
21 opinions persuasive.

1           **B.       The ALJ Erred by Discounting Plaintiff's Testimony**

2           Where, as here, an ALJ determines a claimant has presented objective medical evidence  
 3 establishing underlying impairments that could cause the symptoms alleged, and there is no  
 4 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to  
 5 symptom severity by providing "specific, clear, and convincing" reasons supported by  
 6 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

7           The ALJ discounted Plaintiff's testimony of debilitating back impairments because,  
 8 except for short-term exacerbations due to "heavy lifting" in mid-2017 and "a lot of manual  
 9 labor" in July 2018, Plaintiff reported few symptoms and failed to follow up on a referral. AR at  
 10 22 (citing *id.* at 318, 592). Plaintiff argues the record does not reveal the type or extent of the  
 11 manual labor. (Dkt. # 21 at 2.) But the ALJ did not rely on the report of manual labor to  
 12 determine Plaintiff's abilities. Rather, the ALJ noted Plaintiff's pain complaints were only  
 13 "sporadic" and followed reports of overexertion. AR at 22. Plaintiff does not dispute the ALJ's  
 14 finding of only "minimal complaints of back pain between July 2017 and July 2018 ...." *Id.* The  
 15 ALJ permissibly discounted Plaintiff's testimony of debilitating back impairments as  
 16 contradicted by the medical record. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155,  
 17 1161 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for rejecting a  
 18 claimant's subjective testimony.").

19           The ALJ discounted Plaintiff's testimony of debilitating symptoms from carpal tunnel  
 20 syndrome because he testified he could lift 15 pounds constantly and 20 pounds sometimes, he  
 21 did not use prescribed wrist braces, and he demonstrated normal grip strength and dexterity. AR  
 22 at 21.

1 Plaintiff contends his testimony that he could lift 15 pounds continuously was inaccurate  
2 because he did not understand the question. (Dkt. # 19 at 4.) The only support he offers for this  
3 argument is his Function Report stating he could only lift 10 pounds. *See* AR at 184. Plaintiff's  
4 inconsistent statement does not establish that he misunderstood the questioning at his hearing.  
5 Plaintiff testified he could lift 20 pounds, but not continuously. *Id.* at 42. When his attorney  
6 asked "So I'm looking for something that you could lift all the time. You said 20 you can't do  
7 that," Plaintiff replied "15." *Id.* at 43. The attorney did not seek further clarification. This is  
8 substantial evidence supporting the ALJ's finding that Plaintiff testified he could lift 20 pounds,  
9 and 15 pounds continuously. However, Plaintiff's testimony of lifting did not contradict his  
10 testimony of fingering and handling limitations due to hand numbness.

11 Plaintiff contends he did not use wrist braces because they did not help. (Dkt. # 19 at 4.)  
12 An "unexplained or inadequately explained failure" to seek treatment or follow prescribed  
13 treatment can be a valid reason to discount a claimant's testimony, but an ALJ must consider a  
14 claimant's proffered reasons. *Trevizo*, 871 F.3d at 679-80. The ALJ did not address Plaintiff's  
15 proffered reason, as required. Failure to follow prescribed treatment thus was not a clear and  
16 convincing reason to discount Plaintiff's testimony of hand impairments.

17 Plaintiff contends the findings of normal grip strength and dexterity were "one-time tests  
18 [that] did not measure Plaintiff's ability to perform these activities on a regular and continuing  
19 basis." (Dkt. # 19 at 4.) The Commissioner does not dispute Plaintiff's contention, but argues  
20 "no medical evidence supported this degree of alleged limitation from his carpal tunnel  
21 syndrome ...." (Dkt. # 20 at 3.) However, a claimant's symptom testimony "cannot be rejected  
22 on the sole ground that it is not fully corroborated by objective medical evidence ...." *Rollins v.*  
23 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Normal grip and dexterity, while not fully

1 corroborating Plaintiff's testimony, do not contradict his claims of hand numbness. Conflict with  
2 medical evidence was not a clear and convincing reason to discount Plaintiff's testimony of hand  
3 impairments.

4 The Court concludes the ALJ erred by discounting Plaintiff's testimony of limitations due  
5 to carpal tunnel syndrome.

6 **C. The ALJ Erred by Discounting the Lay Witness Statement**

7 An ALJ may discount lay witness testimony by giving a germane reason. *Diedrich v.*  
8 *Berryhill*, 874 F.3d 634, 640 (9th Cir. 2017). Plaintiff's wife filled out a Function Report form,  
9 stating Plaintiff's "[h]and numbness prevents him from doing anything" and back pain prevents  
10 him "from standing longer than 10 min[utes]." AR at 205. The ALJ discounted Plaintiff's wife's  
11 statement as inconsistent with medical evidence of full grip strength and reports that "he was  
12 working and performing manual labor over the summer of 2018." *Id.* at 24. However, full grip  
13 strength does not contradict numbness. "The fact that lay testimony ... may offer a different  
14 perspective than medical records alone is precisely why such evidence is valuable" in a disability  
15 determination. *Diedrich*, 874 F.3d at 640. And the ALJ's finding of ongoing work in summer  
16 2018 does not have the support of substantial evidence. A single reference during an emergency  
17 room visit to "a lot of manual labor which is [sic] been hurting his back" does not support an  
18 inference of ongoing work. AR at 592 (duplicated at *id.* at 650). The Court concludes the ALJ  
19 erred by discounting Plaintiff's wife's lay witness statement without a germane reason.

20 **V. CONCLUSION**

21 For the foregoing reasons, the Commissioner's final decision is REVERSED and this  
22 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C.  
23

1 § 405(g). On remand, the ALJ should reevaluate Plaintiff's testimony and his wife's lay witness  
2 statement.

3 Dated this 23rd day of November, 2020.

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MICHELLE L. PETERSON  
United States Magistrate Judge